

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GABRIEL STEIF and EVA STEIF,

Plaintiffs,

-against-

GREYHOUND LINES, INC. and WILLIAM LEE
HENLEY, JR.,

Defendants.
-----X

VIA ECF

08 CV 2892 (NRB)

AFFIRMATION

KEVIN B. POLLAK, an attorney duly admitted to practice law before the courts of the State of New York, and the Southern District of New York, sets forth upon information and belief and under the penalties of perjury as follows.

I am a member of the firm Fabiani Cohen & Hall, LLP, attorneys for the defendants, and as such am fully familiar with the facts and circumstances herein from reviewing the file maintained by this office with respect to the above matter.

This affirmation is submitted in support of the defendants' Daubert motion which seeks an Order precluding the plaintiffs' medical expert Dr. Daniel Kuhn from testifying at the trial of this matter, as well as precluding the plaintiffs' medical expert, Dr. Mortin Finkel from testifying at the trial of this matter with respect to any testimony by Dr. Finkel that is on the same subject matters as Dr. Kuhn's testimony and/or which relies upon or is based upon any findings, conclusions or opinions of Dr. Daniel Kuhn.

Submitted in support of the defendants' motion are the within affirmation, the annexed affidavits of Dr. Brian Greenwald and Dr. Dustin Gordon, and the annexed Memorandum of Law.

As more fully set forth in the annexed affidavits of the defendants' brain injury expert (Dr. Greenwald) and the defendants' expert neuropsychologist (Dr. Gordon), as well as the accompanying Memorandum of Law, pursuant to Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 (1993) and the Federal Rules of Evidence, the plaintiffs' psychiatrist, Dr. Daniel Kuhn, should be precluded from testifying at trial since Dr. Kuhn's methodology in arriving at his findings, conclusions and opinions; has not been favorably peer reviewed, is not generally accepted within the relevant medical community that diagnosis, cares for and treats brain injury patients, is not based upon reliable principles, and has a high potential rate of error.

Dr. Greenwald and Dr. Gordon demonstrate that the quantitative electroencephalogram ("QEEG") methodology, Evoked Potential Testing and psychological testing used by and relied by Dr. Kuhn to diagnose the plaintiff as having a traumatic brain injury fail to meet the Daubert standard of admissibility.

To the extend that the plaintiff's neurologist, Dr. Morton Finkel, will testify upon the same subjects as Dr. Kuhn and/or utilize or rely upon any findings, conclusions or opinions of Dr. Kuhn, Dr. Finkel should be precluded from testifying at trial.

WHEREFORE, it is respectfully requested that the Court grant the defendants' motion to in its entirety and grant such other and further relief as to the Court seems just and proper.

Dated: New York, New York
February 3, 2009



Kevin B. Pollak (KBP 6098)

Gabriel Steif and Eva Steif v. Greyhound Lines, Inc. and William Lee Henley, Jr.
Index Number: 08 CV 2892
Our File Number: 818-34751

CERTIFICATE OF SERVICE

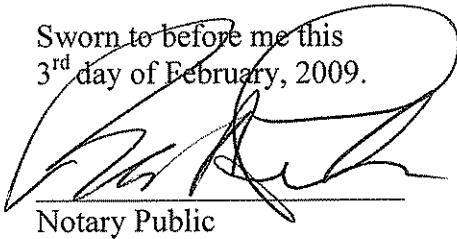
This is to certify that a copy of the foregoing **AFFIRMATION**, was served via facsimile, ECF and e-mail, this 3rd day of February, 2009, upon:

JAROSLAWICZ & JAROS, LLC
Attorneys for Plaintiffs
GABRIEL STEIF and EVA STEIF
225 Broadway - 24th Floor
New York, New York 10007



Kevin B. Pollak (6098)

Sworn to before me this
3rd day of February, 2009.


Notary Public

BELKIS R. FELIU
NOTARY PUBLIC-STATE OF NEW YORK
No. 01FE5042920
Qualified in New York County
My Commission Expires September 05, 2011

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AFFIRMATION

FABIANI COHEN & HALL, LLP
Attorneys for Defendants
GREYHOUND LINES, INC. and
WILLIAM LEE HENLEY, JR.
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New York, New York 10022
(212) 644-4420

To: Attorney(s) for:
Sir(s):

PLEASE TAKE NOTICE that a of which the within is a
(true) (certified) copy

[] NOTICE OF ENTRY *was duly entered in the within named court on*
2008

[] NOTICE OF SETTLEMENT *will be presented for settlement to the Hon.*
one of the judges of the within named court at the Courthouse at on , 2008 at
o'clock

Dated:

Yours, etc.,
FABIANI COHEN & HALL, LLP
570 Lexington Avenue, 4th Floor
New York, New York 10022
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